



Steven W. Troxler
Commissioner

**North Carolina Department of Agriculture
and Consumer Services**
Veterinary Division

David T. Marshall, DVM
State Veterinarian

January 4, 2011

Mr. Matthew Lovelace
207 Cottonwood Drive
Mount Holly, NC 28120

CERTIFIED MAIL RETURN
RECEIPT REQUESTED

7006 2760 0003 0472 2280

NOTICE OF CIVIL PENALTY

RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF ANIMAL WELFARE ACT, N.C. GENERAL STATUTE § 19A- AND TITLE 2, N.C. ADMINISTRATIVE CODE, CHAPTER 52J, SECTION .0000

Dear Mr. Lovelace:

Pursuant to N.C. Gen. Stat. § 19A-40 I am issuing this notice to you that a civil penalty has been assessed against you by the North Carolina Department of Agriculture and Consumer Services, Veterinary Division (NCDA&CS). The civil penalty assessment is attached.

Within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing in the Office of Administrative Hearings (OAH) to appeal the penalty assessment.

Pursuant to N.C. Gen. Stat. § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, present your offer to Dr. Lee Hunter, Director, Animal Welfare Section, who may be contacted by telephone at (919) 733-7601. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. David T. Marshall
State Veterinarian
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. Gen. Stat. § 150B-23. The petition must be accompanied by a filing fee of twenty dollars (\$20.00) payable to the N.C. Office of Administrative Hearings. Should you have any questions about what the fee would be for your case, please contact the OAH Clerk's Office at 919-431-3000. Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone 919/733-0926. You must serve NCDA&CS by mailing a copy of the petition to:

Mr. Ray Starling
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lee Hunter', with a long horizontal line extending to the right.

Lee Hunter, DVM, MPH
Director, Animal Welfare Section

DTM/cs

Attachment: Assessment Document

cc: David McLeod, Assistant Commissioner, NCDA&CS
David T. Marshall, DVM, State Veterinarian, NCDA&CS
Barry Bloch, Assistant Attorney General, NCDOJ
Howard Isley, Assistant Commissioner, NCDA&CS
Brian Long, Director of Public Affairs, NCDA&CS
Ray Starling, Legal Affairs, NCDA&CS

STATE OF NORTH CAROLINA
COUNTY OF GASTON

NORTH CAROLINA DEPARTMENT OF
AGRICULTURE AND CONSUMER SERVICES,
VETERINARY DIVISION

IN THE MATTER OF
MR. MATTHEW LOVELACE

) NOTICE OF VIOLATIONS AND
) ASSESSMENT OF CIVIL
) PENALTY

) For Violations Of:
) Animal Welfare Act
) N.C. General Statute § 19A-24
) 2 N.C. Administrative Code 52J
) .0402 and .0414

Acting pursuant to N.C. Gen. Stat. § 19A-40, Dr. Lee Hunter, Director, Animal Welfare Section, North Carolina Department of Agriculture and Consumer Services (NCDA&CS) makes the following:

FINDINGS OF FACT

1. On July 9, 2009, the Animal Welfare Section, Veterinary Division, North Carolina Department of Agriculture & Consumer Services ("the Section"), issued Matthew Lovelace ("Lovelace") certification as a euthanasia technician, to serve in the Gaston County Animal Shelter.
2. The Gaston County Animal Shelter terminated Lovelace's employment there on March 12, 2010.
3. The Gaston County Animal Shelter informed the Section of its termination of Lovelace's employment on March 18, 2010.
4. Lovelace did not notify the Section of termination of his employment at Gaston County Animal Shelter.
5. Lovelace's certification as a euthanasia technician was cancelled upon termination of his employment pursuant to 2 NCAC 52J .0414.
6. Subsequently Lovelace was hired by Lincoln County Animal Services and employed at the Lincoln County Animal Shelter, 650 John Howell Memorial Drive, Lincolnton, North Carolina.
7. Neither Lincoln County Animal Services nor Lovelace notified the Section to request the transfer of Lovelace's certification as a euthanasia technicians.
8. From Lovelace's first day of employment at Lincoln County Animal Shelter until December 17, 2010, Lovelace euthanized approximately 35 animals.
9. Lovelace's work as a euthanasia technician at Lincoln County Animal Shelter was discovered by the Section's inspector, Gary Stamey, during a routine facility and record inspection on December 17, 2010.

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, alleges that Mr. Lovelace, either by act or omission, violated the following provision of the N.C. General Statute:

- a) N.C. Gen. Stat. § 19A-24
- B) North Carolina Administrative Code 52J .0402 and .0414:

§ 19A-24. Powers of Board of Agriculture.

(a) The Board of Agriculture shall:

(1) Establish standards for the care of animals at animal shelters, boarding kennels, pet shops, and public auctions. A boarding kennel that offers dog day care services and has a ratio of dogs to employees or supervisors.

or both employees and supervisors, not more than 10 to one, shall not as to such services be subject to any regulations that restrict the number of dogs that are permitted within any primary enclosure.

(2) Prescribe the manner in which animals may be transported to and from registered or licensed premises.

(3) Require licensees and holders of certificates to keep records of the purchase and sale of animals and to identify animals at their establishments.

(4) Adopt rules to implement this Article, including federal regulations promulgated under Title 7, Chapter 54, of the United States Code.

(5) Adopt rules on the euthanasia of animals in the possession or custody of any person required to obtain a certificate of registration under this Article. An animal shall only be put to death by a method and delivery of method approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association. The Department shall establish rules for the euthanasia process using any one or combination of methods and standards prescribed by the three aforementioned organizations. The rules shall address the equipment, the process, and the separation of animals, in addition to the animals' age and condition. If the gas method of euthanasia is approved, rules shall require

(i) that only commercially compressed carbon monoxide gas is approved for use, and

(ii) that the gas must be delivered in a commercially manufactured chamber that allows for the individual separation of animals. Rules shall also mandate training for any person who participates in the euthanasia process.

(b) In addition to rules on the euthanasia of animals adopted pursuant to subdivision (5) of subsection (a) of this section, the Board of Agriculture may adopt rules on the euthanasia of animals for:

(1) Written and practical examinations for persons who perform euthanasia.

(2) Issuance of certification to persons who have successfully completed both training and examinations to become a euthanasia technician.

(3) Recertification of euthanasia technicians on a periodic basis.

(4) Standards and procedures for the approval of persons who conduct training of euthanasia technicians.

(5) Approval of materials for use in euthanasia technician training.

(6) Minimum certification criteria for persons seeking to become euthanasia technicians including, but not limited to: age; previous related experience; criminal record; and other qualifications that are related to an applicant's fitness to perform euthanasia.

(7) Denial, suspension, or revocation of certification of euthanasia technicians who either violate any provision of the Animal Welfare Act pursuant to Article 3 of Chapter 19A of the General Statutes or otherwise become ineligible for certification.

(8) Provision of the names of persons who perform euthanasia at animal shelters and for the animal shelter to notify the Department when those persons are no longer affiliated, employed, or serving as a volunteer with the shelter.

(9) Certified euthanasia technicians to notify the Department when they are no longer employed by or are serving as a volunteer at an animal shelter.

(10) The duties, responsibilities, and standards of conduct for certified euthanasia technicians.

(1977, 2nd Sess., c. 1217, s. 5; 1987, c. 827, s. 62; 2004-199, s. 12; 2005-276, s. 11.5(b); 2005-345, s. 22; 2008-198, s. 2(a).)

02 NCAC 52J .0402 AUTHORIZED PERSONS

Only a Certified Euthanasia Technician, Probationary Euthanasia Technician, or a veterinarian licensed to practice veterinary medicine in North Carolina may euthanize an animal in a certified animal shelter. A Certified Euthanasia Technician shall not euthanize animals using a method for which he or she is not currently certified except as specified in 02 NCAC 52J .0700.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009.

02 NCAC 52J .0414 TERMINATION OF EMPLOYMENT

Upon termination of employment or volunteer status from a certified facility, a Certified Euthanasia Technician shall not perform animal euthanasia in a certified facility until recertified by the Animal Welfare Section. The Certified Euthanasia Technician's certification shall be canceled effectively upon termination of employment or volunteer status. No later than 10 days from the date of the termination of a Certified Euthanasia Technician's employment or volunteer status at that certified facility the Certified Euthanasia Technician shall complete a form notifying the Animal Welfare Section of the termination of employment or volunteer status and shall return the form and the Certificate to the Animal Welfare Section.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009.

II. CONCLUSIONS OF LAW

- A. Mr. Lovelace violated N.C. General Statute § 19A-24 and 2 N.C. Administrative Code 52J .0402 and .0414 and may be assessed a civil penalty of up to \$5,000.00 per violation pursuant to N.C. Gen. Stat. § 19A-40.
- B. The Director of the Animal Welfare Section, pursuant to N.C. Gen.Stat. § 19A-40, has the authority to assess civil penalties in this matter.

III. DECISION

As required by N.C. Gen. Stat. § 19A-40 in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violation of 2 N.C. Administrative Code 52J .0402 and .0414.

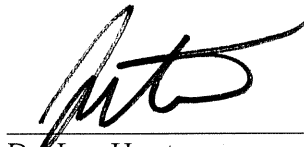
Accordingly, Mr. Lovelace is assessed a civil penalty of: \$1,000.00

\$1,000.00 for violating N.C. General Statute § 19A-24 and 2 North Carolina Administrative Code 52B .0402 and .0414

\$1,000.00 TOTAL AMOUNT ASSESSED

1/4/11

Date



Dr. Lee Hunter

Director, Animal Welfare Section

North Carolina Department of Agriculture & Consumer Services